IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 660 of 2001
In
SPECIAL CIVIL APPLICATION No. 9919 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T CORPN - Appellant(s)

Versus

BASHIR MUSTAFA VANZI - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Appellant(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 28/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1. The appellant-Gujarat State Road Transport Corporation (for short “GSRTC”) has challenged in this appeal the judgment and order dated 18.4.2000 passed by the learned single Judge of this Court (Coram : Ravi R. Tripathi, J.) dismissing the writ petition i.e. Special Civil Application No.9919/99 filed by the appellant-original petitioner-Corporation against the impugned judgment and award dated 14.12.1998 passed by the Labour Court, Surat in Reference (LCS) No.153/98 whereby the Labour Court set aside the order of termination of the respondent-workman passed by the appellant-Corporation for misappropriating amount of Rs.62/= on 13.8.1987 by collecting fairs from the passengers travelling in the bus without issuing tickets to them and imposed a penalty of stoppage of one increment with future effect and giving continuity in service and all other benefits of service except back wages.

2. The learned counsel Mr.Raval for the appellant-Corporation vehemently submitted that the learned Single Judge ought to have taken into consideration the default card of the respondent-workman, which was sought to be produced in the writ petition wherein it was clearly

mentioned that the respondent-workman was habitual and committed as many as 23 defaults during his service of 17 years. This submission of Mr.Raval has no substance. This, default card of the respondent-workman was very much with the appellant-Corporation, which ought to have been produced before the Labour Court in the reference proceedings by them. When the Labour Court, on the basis of material produced before it passed the award, then the learned Single Judge of this court in a writ petition cannot take into consideration any other document, which was not produced before the Labour Court. Therefore, on this ground, no fault can be found with the view taken by the learned Single Judge not allowing the petitioner-Corporation to produce the default card for the first time in the writ petition filed under Article 226 of the Constitution of India.

3. Mr.Raval, then submitted that in the instant case the respondent-workman was dismissed from service by the appellant-Corporation as a serious charge of misappropriation was found to be proved against him during the period of 17 years as Conductor of the bus, then also except the penalty of dismissal or removal from service, no other penalty could be imposed. Having

imposed such penalty, the learned Single Judge ought to have considered that the Labour Court could not have exercised its jurisdiction under Section 11A of the Industrial Disputes Act in favour of the respondent-workman. Mr.Raval has taken us through the impugned judgment and award passed by the Labour Court. Having carefully gone through the impugned judgment and award passed by the Labour Court, we are shocked to notice that the Labour Court thought it fit to exercise its discretion under Section 11A of the Act in favour of the respondent-workman on the ground of amount misappropriated by the respondent-workman was a small amount of only Rs.62/-. Therefore, punishment of dismissal from service was highly disproportionate. The Labour Court totally lost sight of the fact that he was the bus conductor and, therefore, amount of Rs.62/- misappropriated by him after receiving fairs of the tickets from the passengers of the bus and not depositing with the Corporation would be a serious major misconduct. In case of ***REGIONAL MANAGER, U.P.S.R.T.C., ETAWAH AND OTHERS versus HOTILAL AND ANOTHER reported in (2003)3 SCC 605,*** the Hon'ble Supreme Court, after considering its several previous judgments, held that not only the amount involved, but the mental set-up, the type of duty and

similar relevant circumstances have to be taken into consideration to decide the proportionality of the punishment and if the delinquent holds a position of trust where honesty and integrity are inbuilt requirements of functioning, then the matter should be dealt with **iron hand and not leniently.** It was also a case of a bus conductor whose bus was checked on 9.7.1988 by the Assistant Regional Manager, who found 16 persons to be without ticket and the amount of only Rs.16/- recovered from the passengers were misappropriated by the delinquent-conductor. For such a serious charge of misappropriation, his services were terminated by the Corporation. His domestic appeal was also dismissed by the Appellate Authority. The same orders were challenged directly before the High Court by way of writ petition, which was dismissed. However, the appeal filed by the employee before the Division Bench of the High Court was allowed on the ground that the punishment awarded to the delinquent was not commensurate with the gravity of the charge. This was challenged before the Hon'ble Supreme court by way of S.L.P. The Hon'ble Supreme court while allowing the said S.L.P., held as under :-

“The court or tribunal while dealing with the

quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High court are not proper."

In almost similar case i.e. ***REGIONAL MANAGER, RAJASTHAN STATE ROAD TRANSPORT CORPORATION versus SOHAN LAL reported in (2004)8 SCC 218*** the Hon'ble Supreme Court in case of a bus conductor not issuing tickets to the passengers and misappropriating the public amount held that-

> "when there is a monetary loss to Corporation, then there is also a loss of confidence in the employee. Reinstatement of such an employee by virtue of judicial order is an act of misplaced sympathy which can find no foundation in law or in equity. We are bound by the judgments of the Hon'ble Supreme court. In the instant case, this aspect of the case was not at all considered by the learned Single Judge while dismissing the writ petition".

4. Recently, this court has to deal with such an issue raised in Letters Patent Appeal No.745 of 2005 filed by the workman, who was also bus conductor working with the Corporation, his services were also terminated by the Corporation on the charge of misappropriating small amount. However, the Labour Court allowed the reference and set aside the termination order and ordered the

reinstatement of the workman in service with back wages on the ground that it being his first misconduct and, therefore, penalty of dismissal from service was disproportionate to the misconduct. In a writ petition filed by the employer-Corporation, learned Single Judge of this court set aside the impugned judgment and award passed by the Labour Court relying on several judgments of the Hon'ble Supreme Court by observing as under :-

> “If the order of reinstatement is allowed to be passed by the Labour Court it will provide further opportunity to the respondent-workman in indulging similar type of misconducts again and reinstatement in the same post would therefore involve great misconduct because of repetition of the opportunity.”

5. This court agreed with the view taken by the learned Single Judge while allowing the writ petition of the Corporation and setting aside his judgment and award passed by the Labour Court and added that if such a serious vier of the matter is not taken, then others may also try to indulge in such type of activities of misappropriation of public money and dismissed the appeal

filed by the workman on 19.9.2005 by placing reliance on the Hon'ble Supreme Court judgment in case of State of Haryana and another v. Rattan Singh reported in AIR 1977 1512 wherein the Hon'ble Supreme Court held as under :-

> “The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded”.

6. In view of the above discussion, the appeal was required to be allowed. However, learned counsel Mr.Rathod for the respondent-workman submitted that after the learned Single Judge of this court dismissed Special Civil Application No.9919 of 1999 filed by the appellant-Corporation, the Corporation itself has complied with the

impugned judgment and award passed by the Labour Court and reinstated the respondent-workman in service, but because of the stay granted by the Division Bench of this court in Civil Application filed in this appeal, once again the Corporation dismissed the respondent-workman from service and during the pendency of this appeal, the respondent workman had already reached the age of superannuation in 2003, therefore, by not interfering with the impugned judgment and award passed by the Labour Court and the judgment and order passed by the learned Single Judge, the respondent-workman be given at least retiral benefits while treating him as continued in service. However, Mr.Raval for the appellant-Corporation submitted that in compliance with the award passed by the Labour Court, the appellant-Corporation reinstated the respondent-workman in service, but it was made clear while reinstating him in service that his reinstatement would be subject to the result of the Appeal and Civil Application for stay. When the Division Bench of this court found a very strong prima facie case for admission of this appeal and admitted the appeal and stayed the impugned judgment and award passed by the Labour Court as well as learned Single Judge of this court in writ petition, they have once again rightly terminated his

services. Now, he is no more in service and considering the entire facts and circumstances of the case, this court may allow the present appeal and set aside the impugned judgment and award passed by the Labour Court and the judgment and order passed by the learned Single Judge in the writ petition otherwise it would be a case of misplaced sympathy as observed by Hon'ble Supreme Court in several judgments and the appellant-Corporation will have to pay all other retiral benefits to the respondent-workman, including pensionary benefits, gratuity etc. Having heard learned counsel for the parties on this point, we are of the considered opinion that reinstatement of the respondent-workman in view of the impugned judgment and award passed by the Labour Court was a miaplaced sympathy, who lost confidence of his employer, as observed by the Hon'ble Supreme Court in several judgments.

7. In view of the above, when we have already come to the conclusion of both the Labour Court as well as the learned Single Judge of this court have committed an error, then we have to interfere with such orders in this appeal otherwise it would be a failure of justice. Accordingly, this appeal is allowed and the judgment and

order passed by the learned Single Judge dated 18.4.2000 in Special Civil Application No.9919/99 filed by the appellant-Corporation against the impugned judgment and award dated 14.12.1999 passed by the Labour Court in Reference (LCS) No.153/98 is hereby quashed and set aside and the writ petition i.e. Special Civil Application No.9919/99 filed by the appellant-Corporation is accepted and the impugned judgment and award dated 14.12.1998 passed by the Labour Court, Surat in Reference (LCS) No.153 of 1998 reinstating the respondent-workman in service by imposing stoppage of increment of one year with future effect with continuity in service, but without back wages, is hereby quashed and set aside and the order of termination passed by the appellant-Corporation against respondent-workman terminating his service is hereby restored. However, there shall be no order as to costs.

(B.J.SHETHNA, J.)

(M.C.PATEL, J.)

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